
STATE OF HAWAI'I, Plaintiff-Appellant

vs.

FRED ERIC POOHINA, Defendant-Appellee

NO. 23555

ORDER OF AMENDMENT
(CR. NO. 00-027392)

APRIL 12, 2002

MOON, C.J., LEVINSON, NAKAYAMA, RAMIL, AND ACOBA, JJ.

The opinion of the court, filed on February 20, 2002, is hereby amended as follows (deletions are bracketed, additions are underlined):

1. On Page 8, the second sentence in the first paragraph is amended to read:

Poohina's second contention is that HRS § 641-13(2) cannot apply inasmuch as the order was a judgment of acquittal and the principles of double jeopardy [attach] apply thereby rendering a re prosecution a violation of Poohina's constitutional rights.

2. On Page 8, fourth sentence in the first paragraph is amended to read:

The principles of double jeopardy do not [attach] apply because a decision as to Poohina's guilt was never considered.

3. On Page 11, the first sentence in the first paragraph is amended to read:

Jurisdiction could also arise under HRS § 641-13(2) because [double] jeopardy has not attached in this case.

4. On Page 11, the fourth sentence in the first paragraph is amended to read:

However, this court, in Lee, stated that [double] jeopardy does not attach if a trial court fails to issue findings of fact related to the defendant's guilt.

5. On Page 11, the last sentence in the first paragraph is amended to read:

Because the trial court expressly stated that its decision was based upon a conclusion of law, and not on the merits, [double] jeopardy has not attached.

The Clerk of the Court is directed to incorporate the foregoing changes into the original opinion and take all necessary steps to notify the publishing agencies of these changes.